

FILED

JUL 29 2000

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CLERK OF COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 UNITED STATES OF AMERICA,) No. CR 02-40082 SBA
14 Plaintiff,)
15 v.) PLEA AGREEMENT
16 RADU TRAIAN TOMESCU,)
17 Defendant.)
18

19 I, Radu Tomescu, and the United States Attorney's Office for the Northern District of
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")
21 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

22 The Defendant's Promises

23 I. I agree to plead guilty to count 17 of the captioned indictment charging me with
24 Structuring Transactions for the Purpose of Evading a Reporting Requirement, in violation of 31
25 U.S.C. §§ 5324(a)(3). I agree that the elements of the offense of structuring are that I: (1) was
26 aware of the relevant currency reporting requirements; (2) structured, assisted in structuring, or
27 attempted to structure or assist in structuring a financial transaction; (3) did so for the purpose of
28 evading the reporting requirements of section 5311 (a) or 5325 of Title 31; (4) engaged in the

PLEA AGREEMENT [TOMESCU]
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1 financial transaction with a domestic financial institution. I am further aware that the maximum
2 penalties for this offense are as follows:

- | | | | |
|---|----|---------------------------------|---------------------|
| 3 | a. | Maximum prison sentence | 5 years |
| 4 | b. | Maximum fine | \$250,000 |
| 5 | c. | Maximum supervised release term | 3 years |
| 6 | d. | Mandatory special assessment | \$100 |
| 7 | e. | Restitution | Determined by Court |
| 8 | f. | Possible Deportation | |

9 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the
10 following facts are true:

11 (a). From approximately 1998 through 2002, I worked with Sheila Wu, Adnan
12 Torlak, Leng Kouch and others at a computer software distribution company first known as
13 Complete Components, Inc., then later known as Worldwide Sales ("WWS"). My title at WWS
14 was President. During this time period, WWS purchased Microsoft Corporation's "Academic
15 Edition" software products, or "AE software," from an entity known as Samtech Research. AE
16 software packaging contained special markings to distinguish it from Microsoft's standard retail
17 software. WWS altered most of the AE software packages it purchased by removing academic
18 markings and restrictions from those packages, then resold the software into the retail market
19 after inserting unauthorized computer software documents into the software packages, including
20 licenses and registration cards.

21 (b). As President and co-owner of WWS along with Sheila Wu, I was
22 authorized to write checks drawn on WWS's account at Cathay Bank, number 13-011-693, and
23 the Cathay Bank account of Chanmesco, Inc., an entity related to WWS, number 13-012-550.
24 Cathay Bank is located in the Northern District of California. Although Sheila Wu was primarily
25 responsible for handling WWS's finances, I occasionally made deposits into and wrote checks
26 from these accounts. As a result of my experience in financial matters, I knew that banks and
27 other financial institutions were required by law to file Currency Transaction Reports on cash
28 transactions exceeding \$10,000.

(c). By signing or approving of the checks identified below in my capacity as President of WWS, I assisted in the structuring of financial transactions by attempting to evade the filing of a Currency Transaction Report.

(i). As identified in Count 16 of the Indictment, from January 19, 2000 to January 27, 2000, I assisted in the structuring of the following twelve checks drawn on WWS's account at Cathay Bank, number 13-011-693, to avoid the filing of a Currency Transaction Report:

CHECK NUMBER	DATE ON CHECK	PAYEE	AMOUNT
2143	January 19, 2000	AES	\$8,500
2155	January 21, 2000	RT Computers	\$9,500
2156	January 21, 2000	AES	\$9,450
2159	January 23, 2000	RT Computers	\$8,950
2160	January 23, 2000	AES	\$9,000
2162	January 23, 2000	AES	\$9,450
2163	January 22, 2000	RT Computers	\$9,750
2164	January 25, 2000	AES	\$9,500
2165	January 23, 2000	RT Computers	\$8,500
2166	January 23, 2000	AES	\$8,400
2167	January 25, 2000	RT Computers	\$8,400
2176	January 26, 2000	AES	\$3,625
TOTAL			\$103,025

I knew that RT Computers and AES, which were entities owned and operated by Mohammed Yousef Chaudhry, did business with WWS. The twelve checks were later cashed by Ali Khan, an employee of RT Computers and AES, at E.C.L. Enterprise, a check cashing business located in Santa Clara, California.

(ii). As identified in Count 17 of the Indictment, on approximately March 14, 2000, I signed a series of 17 checks which were made payable to RT Computers or AES, drawn on WWS's account at Cathay Bank, No. 13-011-693, to avoid the filing of a Currency

Transaction Report:

CHECK NUMBER	PAYEE	AMOUNT
2408	RT Computers	\$9,450
2409	AES	\$9,800
2410	RT Computers	\$9,500
2411	RT Computers	\$9,750
2412	AES	\$9,400
2413	RT Computers	\$9,550
2414	AES	\$7,500
2415	RT Computers	\$8,000
2416	AES	\$8,500
2417	RT Computers	\$9,750
2418	AES	\$9,850
2419	RT Computers	\$8,850
2420	AES	\$8,950
2421	RT Computers	\$8,750
2422	AES	\$7,850
2423	AES	\$8,900
2424	RT Computers	\$5,650
TOTAL		\$150,000

The seventeen checks were later cashed by Ali Khan at E.C.L. Enterprise, the check cashing business located in Santa Clara.

(iii). As identified in Count 8 of the Indictment, from April 28, 2000 to May 8, 2000, I assisted in the structuring of twelve checks drawn on WWS's account at Cathay Bank, number 13-011-693, as set forth below, to avoid the filing of a Currency Transaction Report:

CHECK NUMBER	DATE ON CHECK	PAYEE	AMOUNT
3603	April 28, 2000	Cash	\$8,900

2623	April 29, 2000	RT Computers	\$9,550
2624	May 1, 2000	Cash	\$8,500
2626	April 29, 2000	AES	\$9,450
2627	May 1, 2000	RT Computers	\$9,550
2630	April 29, 2000	AES	\$9,450
2633	May 1, 2000	AES	\$8,900
2636	May 2, 2000	Cash	\$4,520
2637	May 3, 2000	Cash	\$5,220
2638	May 2, 2000	AES	\$9,250
2639	May 2, 2000	RT Computers	\$8,950
2662	May 4, 2000	RT Computers	\$9,500
TOTAL			\$101,740

These checks were later cashed at E.C.L. Enterprise or Cathay Bank.

(iv) As identified in Count 9 of the Indictment, on May 26, 2000, I assisted in the structuring of check number 2738 in the amount of \$9,500 drawn from WWS's account at Cathay Bank, number 13-011-693, to avoid the filing of a Currency Transaction Report. This check was later cashed by Leng Kouen at Cathay Bank.

(v). In addition to the checks identified in the Indictment, I also assisted in structuring the following checks drawn on the Cathay Bank account of Channesco, Inc., account number 13-012-550, to evade the filing of a Currency Transaction Report:

CHECK NO.	DATE CLEARED	PAYEE	AMT.
1037	September 28, 2000	Teracom	\$7,000
1038	September 28, 2000	Astra	\$7,500
1039	September 28, 2000	Astra	\$7,500
1040	September 28, 2000	Teracom	\$7,350
1041	September 28, 2000	Astra	\$7,778
TOTAL			\$37,128

These five checks were later cashed at Neel's Market in San Jose, California.

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1 (vi). The total amount of the checks identified above, which is the amount
2 I assisted in structuring, is \$401,393.

3 3. I agree to give up all rights that I would have if I chose to proceed to trial, including
4 the rights to a jury trial with the assistance of an attorney; to confront and cross-examine
5 government witnesses; to remain silent or testify; to move to suppress evidence or raise any other
6 Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue
7 any affirmative defenses and present evidence.

8 4. I agree to give up my right to appeal my conviction, the judgment, and orders of the
9 Court. I also agree to waive any right I may have to appeal my sentence.

10 5. As to any matter in which I am cooperating with the government pursuant to this
11 agreement, I waive any right I may have to assert the attorney-client privilege for
12 communications with counsel for any other defendant. This waiver extends to any right I may
13 have to decline to answer any questions asked of me at any proceeding by counsel for any other
14 defendant or a pro se defendant. I also waive my right to conflict-free representation by any
15 attorney or pro se defendant where a conflict arises from that attorney's or defendant's
16 participation in a joint defense agreement to which I also was a party

17 6. I agree not to file any collateral attack on my conviction or sentence, including a
18 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim
19 that my constitutional right to the effective assistance of counsel was violated

20 7. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered.

21 8. I agree to relinquish to the government any right I may have in any capacity, including
22 as an individual and as officer, agent and owner of WWS, to any of the computer software
23 products, software manuals and software packaging materials seized by law enforcement agents
24 from me and WWS in connection with the investigation of this action, including those seized on
25 April 18, 2002. In addition, I agree not to file or cause to have filed any motion pursuant to Fed.
26 R. Crim. P. 41(g) for return of such property.

27 9. In return for the government's promises set out below, I agree that the court should
28 order, and I will pay, restitution to Microsoft Corporation in the amount of \$230,000, which

1 constitutes a reasonable estimate of the amount I profited from the unauthorized sale of
2 Microsoft "Academic Edition" software, pursuant to 18 U.S.C. § 3663(a)(3). Specifically, I
3 agree to satisfy this restitution amount by paying Microsoft Corporation a cashier's check for
4 \$150,000 on or before September 1, 2003, and by paying the remaining \$80,000 to Microsoft
5 Corporation within 14 days of the exoneration of my \$80,000 bond. I agree that this amount of
6 restitution is appropriate even though it relates to conduct not charged in the Indictment, pursuant
7 to 18 U.S.C. § 3663(a)(3). Before and after sentencing, I will, upon request of the Court, the
8 government, or the U.S. Probation Office, provide accurate and complete financial information,
9 submit sworn statements and give depositions under oath concerning my assets and my ability to
10 pay, surrender assets I obtained as a result of my crimes, and release funds and property under my
11 control in order to pay any fine, forfeiture, or restitution. I agree to pay the special assessment at
12 the time of sentencing.

13 10. I agree that the Sentencing Guidelines should be calculated as follows under the
14 Sentencing Guidelines incorporating amendments effective November 1, 1998, and that I will not
15 ask for any other adjustment to or reduction in the offense level or for a downward departure of
16 any kind:

17	a.	Base Offense Level, U.S.S.G. § 1B1.3(a)	
18		and § 2F1.1(b)(1)(H) (based on total value of structured	
19		funds of \$401,393 as set forth in ¶ 2(c) above,	
		which includes \$251,393 of relevant	
		conduct under U.S.S.G. § 1B1.3	+15
20	b.	Acceptance of responsibility:	-2
21		(If I meet the requirements of	
		U.S.S.G. § 3E1.1)	
22	c.	Adjusted offense level	13

23 I agree that, regardless of any other provision in this agreement, the government may and will
24 provide to the Court and the Probation Office all information relevant to the charged offenses or
25 the sentencing decision. I also agree that the Court is not bound by the Sentencing Guidelines
26 calculations above, the Court may conclude that a higher guideline range applies to me, and, if it
27 does, I will not be entitled, nor will I ask, to withdraw my guilty plea.

28 11. I agree to cooperate with the U.S. Attorney's Office before and after I am sentenced.

1 My cooperation will include, but will not be limited to, the following:

- 2 a. I will respond truthfully and completely to any and all questions put to me,
3 whether in interviews, before a grand jury or at any trial or other proceeding;
- 4 b. I will provide all documents and other material in my possession asked for by
5 the government;
- 6 c. I will testify truthfully at any grand jury, court or other proceeding as
7 requested by the government;
- 8 d. I will surrender any and all assets acquired or obtained directly or indirectly as
9 a result of my illegal conduct;
- 10 e. I will request continuances of my sentencing date, as necessary, until my
11 cooperation is completed;
- 12 f. I will tell the government about any contacts I may have with any
13 co-defendants or subjects of investigation, or their attorneys or individuals
14 employed by their attorneys;
- 15 g. I will not reveal my cooperation, or any information related to it, to anyone
16 without prior consent of the government.

17 12. I agree that the government's decision whether to file a motion pursuant to USSG
18 §5K1.1, as described in the government promises section below, is based on its sole and
19 exclusive decision of whether I have provided substantial assistance and that decision will be
20 binding on me. I understand that the government's decision whether to file such a motion, or the
21 extent of the departure recommended by any motion, will not depend on whether convictions are
22 obtained in any case. I also understand that the Court will not be bound by any recommendation
23 made by the government.

24 13. I agree not to commit or attempt to commit any crimes before sentence is imposed or
25 before I surrender to serve my sentence; violate the terms of my pretrial release (if any);
26 intentionally provide false information or testimony to the Court, the Probation Office, Pretrial
27 Services, or the government; or fail to comply with any of the other promises I have made in this
28 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,
then the government will be released from all of its promises, but I will not be released from my
guilty plea.

14. If I am prosecuted after failing to comply with any promises I made in this
Agreement, then (a) I agree that any statements I made to any law enforcement or other

1 government agency or in Court, whether or not made pursuant to the cooperation provisions of
2 this Agreement, may be used in any way; (b) I waive any and all claims under the United States
3 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal
4 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my
5 statements, or any leads derived from those statements; and (c) I waive any defense to any
6 prosecution that it is barred by a statute of limitations, if the limitations period has run between
7 the date of this Agreement and the date I am indicted

8 15. I agree that this Agreement contains all of the promises and agreements between the
9 government and me, and I will not claim otherwise in the future.

10 16. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District
11 of California only, and does not bind any other federal, state, or local agency.

12 The Government's Promises

13 17. The government agrees to move to dismiss any open charges pending against the
14 defendant in the captioned indictment at the time of sentencing.

15 18. The government agrees not to file or seek any additional charges against the
16 defendant that could be filed as a result of the investigation that led to the pending indictment.

17 19. The government agrees not to use any statements made by the defendant pursuant to
18 this Agreement against him, unless the defendant fails to comply with any promises in this
19 agreement.

20 20. If, in its sole and exclusive judgment, the government decides that the defendant has
21 cooperated fully and truthfully, provided substantial assistance to law enforcement authorities
22 within the meaning of U.S.S.G. §5K1.1, and otherwise complied fully with this Agreement, it
23 will file with the Court a motion under §5K1.1 and/or 18 U.S.C. § 3553 that explains the nature
24 and extent of the defendant's cooperation and recommends a downward departure.

25 21. Based on the information now known to it, the government will not oppose a
26 downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1.

27 22. The government agrees to recommend the Guidelines calculations and restitution
28 amount set out above.

The Defendant's Affirmations

23. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorneys, and that they have provided me with all the legal advice that I requested.

24. I confirm that while I considered signing this Agreement and, at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

25. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

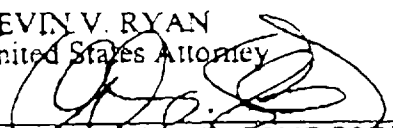
Dated: July 29, 2003



RADO TOMESCU
Defendant

KEVIN V. RYAN
United States Attorney


Dated: July 29, 2003



CHRISTOPHER P. SONDERBY
Assistant United States Attorney

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: July 29, 2003



ROBERT CHEASTY
Attorney for Defendant

Dated: July 29, 2003

JAN NIELSEN LITTLE
Attorney for Defendant

1 The Defendant's Affirmations

2 23. I confirm that I have had adequate time to discuss this case, the evidence, and this
3 Agreement with my attorneys, and that they have provided me with all the legal advice that I
4 requested.

5 24. I confirm that while I considered signing this Agreement and, at the time I signed it, I
6 was not under the influence of any alcohol, drug, or medicine.

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8 have been brought against me, any possible defense, and the benefits and possible detriments of
9 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
10 one coerced or threatened me to enter into this agreement.

11 Dated: _____

12 RADU TOMESCU
Defendant

13 KEVIN V. RYAN
United States Attorney

14 Dated: _____

15 CHRISTOPHER P. SONDERBY
Assistant United States Attorney

16
17 I have fully explained to my client all the rights that a criminal defendant has and all
18 the terms of this Agreement. In my opinion, my client understands all the terms of this
19 Agreement and all the rights he is giving up by pleading guilty, and, based on the information
20 now known to me, his decision to plead guilty is knowing and voluntary.

21
22 Dated: _____

23 ROBERT CHEASTY
Attorney for Defendant

24
25 Dated: 7/25/03

26 JAN NIELSEN LITTLE
Attorney for Defendant

27
28 PLEA AGREEMENT (TOMESCU)
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